

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3063
OFFERED BY MR. LUCAS OF OKLAHOMA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Retirement Fairness
3 for Charities and Educational Institutions Act of 2023”.

4 SEC. 2. ENHANCEMENT OF 403(b) PLANS.

5 (a) AMENDMENTS TO THE INVESTMENT COMPANY
6 ACT OF 1940.—Section 3(c)(11) of the Investment Com-
7 pany Act of 1940 (15 U.S.C. 80a–3(c)(11)) is amended
8 to read as follows:

9 “(11) Any—

10 “(A) employee’s stock bonus, pension, or
11 profit-sharing trust which meets the require-
12 ments for qualification under section 401 of the
13 Internal Revenue Code of 1986;

14 “(B) custodial account meeting the re-
15 quirements of section 403(b)(7) of such Code;

16 “(C) governmental plan described in sec-
17 tion 3(a)(2)(C) of the Securities Act of 1933;

1 “(D) collective trust fund maintained by a
2 bank consisting solely of assets of one or
3 more—

4 “(i) trusts described in subparagraph
5 (A);

6 “(ii) government plans described in
7 subparagraph (C);

8 “(iii) church plans, companies, or ac-
9 counts that are excluded from the defini-
10 tion of an investment company under para-
11 graph (14) of this subsection; or

12 “(iv) plans which meet the require-
13 ments of section 403(b) of the Internal
14 Revenue Code of 1986—

15 “(I) if—

16 “(aa) such plan is subject to
17 title I of the Employee Retirement
18 Income Security Act of
19 1974 (29 U.S.C. 1001 et seq.);

20 “(bb) any employer making
21 such plan available agrees to
22 serve as a fiduciary for the plan
23 with respect to the selection of
24 the plan’s investments among
25 which participants can choose; or

1 “(cc) such plan is a govern-
2 mental plan (as defined in sec-
3 tion 414(d) of such Code); and

4 “(II) if the employer, a fiduciary
5 of the plan, or another person acting
6 on behalf of the employer reviews and
7 approves each investment described
8 under subclause (I)(bb) prior to the
9 investment being offered to partici-
10 pants in the plan; or

11 “(E) separate account the assets of which
12 are derived solely from—

13 “(i) contributions under pension or
14 profit-sharing plans which meet the re-
15 quirements of section 401 of the Internal
16 Revenue Code of 1986 or the requirements
17 for deduction of the employer’s contribu-
18 tion under section 404(a)(2) of such Code;

19 “(ii) contributions under govern-
20 mental plans in connection with which in-
21 terests, participations, or securities are ex-
22 empted from the registration provisions of
23 section 5 of the Securities Act of 1933 by
24 section 3(a)(2)(C) of such Act;

1 “(iii) advances made by an insurance
2 company in connection with the operation
3 of such separate account; and

4 “(iv) contributions to a plan described
5 in subparagraph (D)(iv).”.

6 (b) AMENDMENTS TO THE SECURITIES ACT OF
7 1933.—Section 3(a)(2) of the Securities Act of 1933 (15
8 U.S.C. 77c(a)(2)) is amended—

9 (1) by striking “or (D)” and inserting “(D) a
10 plan which meets the requirements of section 403(b)
11 of such Code (i) if (I) such plan is subject to title
12 I of the Employee Retirement Income Security Act
13 of 1974 (29 U.S.C. 1001 et seq.), (II) any employer
14 making such plan available agrees to serve as a fidu-
15 ciary for the plan with respect to the selection of the
16 plan’s investments among which participants can
17 choose, or (III) such plan is a governmental plan (as
18 defined in section 414(d) of such Code), and (ii) if
19 the employer, a fiduciary of the plan, or another per-
20 son acting on behalf of the employer reviews and ap-
21 proves each investment described under clause (i)(II)
22 prior to the investment being offered to participants
23 in the plan, or (E)”;

24 (2) by striking “(C), or (D)” and inserting
25 “(C), (D), or (E)”;

1 (3) by striking “(iii) which is a plan funded”
2 and inserting “(iii) in the case of a plan not de-
3 scribed in subparagraph (D), which is a plan fund-
4 ed”.

5 (c) AMENDMENTS TO THE SECURITIES EXCHANGE
6 ACT OF 1934.—Section 3(a)(12)(C) of the Securities Ex-
7 change Act of 1934 (15 U.S.C. 78c(a)(12)(C)) is amend-
8 ed—

9 (1) by striking “or (iv)” and inserting “(iv) a
10 plan which meets the requirements of section 403(b)
11 of such Code (I) if (aa) such plan is subject to title
12 I of the Employee Retirement Income Security Act
13 of 1974 (29 U.S.C. 1001 et seq.), (bb) any employer
14 making such plan available agrees to serve as a fidu-
15 ciary for the plan with respect to the selection of the
16 plan’s investments among which participants can
17 choose, or (cc) such plan is a governmental plan (as
18 defined in section 414(d) of such Code), and (II) if
19 the employer, a fiduciary of the plan, or another per-
20 son acting on behalf of the employer reviews and ap-
21 proves each investment described under subclause
22 (I)(bb) prior to the investment being offered to par-
23 ticipants in the plan, or (v)”;

24 (2) by striking “(ii), or (iii)” and inserting
25 “(ii), (iii), or (iv)”;

1 (3) by striking “(II) is a plan funded” and in-
2 serting “(II) in the case of a plan not described in
3 clause (iv), is a plan funded”.

